IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3653 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUNVANT @ CHITO NARSIBHAI DOBARIYA

Versus

STATE OF GUJARAT

Appearance:

MR HR Prajapati for MR HD CHUDASAMA for the Petitioner
MR HL JANI, A.G.P., for Respondent Nos. 1, 2, 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 25/06/2001

ORAL JUDGEMENT

Heard Ld. Advocate Mr.H.R.Prajapati for Mr.H.D. Chudasama on behalf of the petitioner and Ld.A.G.P. Mr.H.L.Jani on behalf of the respondents.

2. In the present petition, the petitioner has challenged the order of detention dated 13th September, 2000 passed by the Police Commissioner, Rajkot City under the provisions of Prevention of Anti-social Activities Act ('the PASA' for short). The petitioner has challenged the detention order under Art.226 of the Constitution of India. The order of detention has been passed under Section 3(1) of the PASA Act. The grounds of detention have been communicated and supplied under Section 9(1) of the PASA Act to the present petitioner. The present petitioner has considered to be a bootlegger under Section 2(b) of the PASA Act. As per the grounds of detention, two offences were registered against the present petitioner under the provisions of Bombay Prohibition Act. Both the offences were registered on the same day i.e. 8th January, 2000. There was no statement of secret witness recorded by the concerned authority. No unregistered offence has been mentioned in the grounds of detention. The State of Gujarat has not filed any reply.

3. Ld.Advocate Mr.Prajapati has submitted that as per Ground 'i' at Page 6 of the petition, the petitioner has challenged the detention order on the ground that considering the two cases of registered offences dated 8th January, 2000 and in between no offence registered or unregistered against the present petitioner and the detention order has been passed on 13th September, 2000. Therefore, there was a delay of eight months in passing the detention order and such delay remained unexplained and, therefore, there was no proximate or having any direct nexus which required to pass impugned order of detention, after a period of eight months. Mr.Prajapati has relied upon the decision of this Court, reported in 1997 (1) GLH 381.

4. Ld.A.G.P., Mr.H.L.Jani appearing on behalf of the respondent-State has submitted that no doubt there is a delay in passing the detention order but he submitted that the detaining authority has considered all the relevant materials as per paragraph 4 at page 18 of the grounds of detention and he also submitted that after considering the relevant materials and activities of the present petitioner, there was compelling circumstances to pass detention order and therefore, detaining authority

has rightly pass the detention order which is legal and valid and the same is not required any interference by this Court.

5. I have considered the submissions of both the Ld. Advocates. Looking to the grounds of detention, only two offences were registered on 8th January, 2000. Thereafter, no offence either registered or unregistered was committed by the present petitioner and no statement of secret witness has been recorded by the detaining authority and no reply has been filed by the State of Gujarat to explain the delay. The view taken by this Court in case of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and Ors. reported in 1997 (1) GLH 381 in paragraph 21, which is quoted as under :

> "21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenue was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S.Ramamurthy reported in 1993(2) Suppli. SCC 61."

6. I have considered the submissions of both the advocates and looking to the observations made by this Court, according to my opinion, when there was a delay in

passing the detention order and in between there was no offence registered or unregistered committed by the petitioner, therefore, there was no proximate or having any direct nexus which required to pass impugned detention order against the present petitioner. Considering this aspect, according to my opinion, the order of detention dated 13th September, 2000 is required to be set aside.

7. In the result the present petition is allowed. The order of detention dated 13th September, 2000 passed by the Police Commissioner, Rajkot City is hereby quashed and set aside. The present petitioner detenue Shri Gunvant @ Chito Narshibhai Dobaria detained in Junagadh Jail is ordered to be released immediately, if he is not required in any other case. Rule is made absolute. No order as to costs.

(H.K.Rathod, J)

'Bhavesh'